



DEPARTMENT OF STATE

Washington, D.C. 20520

January 25, 1980

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~~LIMITED OFFICIAL USE~~MEMORANDUM

TO: Ms. Patt Derian

FROM: HA - Patrick J. Flood *PJF*

SUBJECT: Status of Argentina HR Report

Doug Dworkin phoned HA this afternoon to say that the Secretary had approved our version of the Argentina report. Verbatim. He said the Secretary added that he has no objection to your accepting some of the ARA language if you should decide you wish to do so. You don't have to change a single word, though. A signed action memo to this effect is on its way to you.

Doug strongly recommended that we not transmit the report to the NSC in the usual manner, i.e., in a batch with others. He thinks a different sort of transmittal would be more appropriate. I've relayed this view to Ken Rogers, who will hold the report pending further instructions from you.

In a related development, Arnie Raphael called to say the Secretary wanted a clean text of the report this afternoon. I arranged with ARA to run it off, both ARA and I proofread it separately, and I delivered two copies to John Evans (Raphael was at a meeting) at 4:30.

Tim Dunn, the ARA human rights reports officer, is aware of all of the foregoing.

A copy of the report is attached.

cc:CSalmon
SCohen
FSieverts
KRogers

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ARGENTINA

Over the past twenty-five years Argentina has passed through several cycles of alternating civilian and military rule; since 1955, there have been six military and six civilian presidents. Beginning in 1969, violence mounted progressively from the left and the right as groups with widely different political objectives and conceptions struggled for power. As a result, both civilian and military governments have maintained a "state of siege" for some nine of the past ten years. At the height of this violence in 1975-1976, terrorism had taken on broad dimensions: bombings, robberies, kidnappings and assassinations for political reasons were common occurrences. Organized terrorist groups on both sides of the political spectrum numbered some 5,000-6,000 persons, with sympathizers estimated at an additional 15,000.

By 1976 conditions in Argentina had deteriorated sharply. Courts and political leaders were being intimidated; inflation approached 800 per cent; and many essential public services had been disrupted. At this point, the Armed Forces again took control of the state, with the avowed goals of promoting economic recovery and ending terrorism and corruption. They promised that democracy would ultimately be restored. The Armed Forces maintained the state of siege imposed in 1974 by President Maria Estela Peron, closed Congress, deposed the President, and replaced all members of the Supreme Court. Elected state and local governmental officials were replaced by military officers, and political party activities, including the right of assembly, were prohibited. Most trade unions were intervened and all strikes were banned.

The security forces embarked on a widespread counter-campaign of violence aimed at terrorists as well as elements of the society they considered subversive; many known or suspected terrorists, as well as many persons with no subversive record, disappeared. Many others were detained by the Executive without any specific charge under the "state of siege" powers of the Constitution.

The most carefully recorded and documented list of unexplained disappearances, compiled by the Permanent Assembly for Human Rights in Buenos Aires, contains about 6,500 cases for the period 1976 to 1979. Some estimates, however, run considerably higher. The Mission of the New York City Bar Association, which visited Argentina in 1979, considers a figure of 10,000 as more accurate, while Amnesty International asserts that 15-20,000 persons have disappeared. There is substantial evidence that most of these persons were abducted by the security forces and interrogated under torture; as most have not reappeared, many observers believe that they were summarily executed. There have been reports, difficult to verify, that some missing persons have been seen alive in detention centers.

As regards use of the Argentine Executive's "state-of-siege" detention powers, some 8,200 persons have been arrested under these provisions since 1974, both by the present Government and its predecessor. While many of those so detained have been released, others have been held without trial for years. In the view

of the Executive, the Argentine constitution places no specific time limit on detention under the "state of siege". Several courts (first-instance and appellate) held that such prolonged detention is in essence an imposition of punishment without due process, and hence unconstitutional. The Supreme Court, however, has overruled these lower court decisions and upheld the Executive's position.

Conditions of detention were often cruel, and serious problems of mistreatment, overcrowding, and insufficient medical care often existed. Although the Government asserts that torture was never authorized, there is extensive evidence that torture was routinely used during interrogation by the security forces. Since 1979, the use of torture appears to have been sharply reduced, parallel with the decline in the number of new disappearances.

Beginning in early 1978, Government spokesmen declared the war on terrorism to have been won. Conceding that excesses had been committed, the national authorities, through a variety of directives and personnel transfers, have sought to tighten control over the operations of the security forces. At the invitation of the Argentine Government, the Inter-American Human Rights Commission visited Argentina in September 1979 to investigate human rights abuses. The Commission interviewed many government, human rights, religious, political and labor officials, and had access to prisons and detention centers. A mission of the New York City Bar Association was also permitted to visit Argentina in 1979.

Since late 1978, the incidence of disappearances has declined significantly. They numbered many thousands in both 1976 and 1977, and over 500 in 1978; since then such occurrences have been sharply reduced. In 1979 there were 44 known disappearances, most of which occurred in the first half of the year. There are indications that the Government has committed itself to end this practice.

The number of prisoners held without charge under the Executive's "state-of-siege" has been reduced substantially; about 1,300 remained in late 1979. The Government has released large numbers of these detainees. An estimated 1,000 others have been tried and convicted and are still serving prison terms. About 500 more are currently on trial. A review board is working actively on cases of the remaining prisoners. A presidential decree in April regularizing prison rules led to significant improvements in many prison facilities.

Terrorist activities in Argentina have largely ceased. There are reports that small numbers of terrorists are being trained in third countries and are returning to Argentina. In three separate instances, terrorists attempted to murder high officials in late 1979. The GOA has declared that the incidents of the past year are isolated events which do not signal a major resurgence of terrorism.

Political party activity continues to be prohibited and labor unions remain narrowly circumscribed; Government guidelines limit freedom of expression. The Government has promulgated new trade union legislation which sets forth guidelines for future labor union activity and lays a basis for lifting the present restrictions.

The law has been criticized by Argentine and international labor organizations as a Government attempt to curtail organized labor's political and economic power.

In late 1979, the Government promulgated a "political plan" containing broad guidelines for an eventual return to civilian rule and a promise to develop specific proposals in 1980, following a dialogue between military leaders and diverse civilian groups.

Argentine human rights groups are active and well organized, although their leadership has been subject to severe harassment and arrest.

1. Respect for the Integrity of the Person, Including Freedom from:

a. Torture

There is extensive evidence, primarily the statements of former detainees, that torture has been routinely used by the security forces. It has been most frequent during the first days of interrogation and, according to numerous reports, has taken such forms as the use of electric shock, immersion of the head in water, mock executions, and other types of severe physical and psychological abuse. There are also credible allegations that such practices continued in 1979, with new detainees. The national Government has publicly stated that it has never authorized the use of torture.

b. Cruel, Inhuman or Degrading Treatment or Punishment

There is an extensive body of evidence indicating that summary execution was a common practice during the years when large numbers of people were being detained by the security forces.

Before early 1979, conditions of imprisonment were poor, and medical services rudimentary. In April 1979, the government decreed uniform prison regulations which have led to a general improvement in prison conditions. There are some reports of continued abuse, but in general over-crowding has been reduced, medical care is better, and visits by family and legal counsel assured, as is the receipt of educational and writing material. The International Committee of the Red Cross maintains a regular program of prison visits.

c. Arbitrary Arrest and Imprisonment

The Argentine Constitution, in Article 23, establishes the power of the Executive Branch to detain and hold prisoners under a "state of siege" (which has been in effect since 1974). The constitutional provisions are referred to as the National Executive Power ("PEN" for the Spanish words Poder Ejecutivo Nacional). The Executive has interpreted the Constitution, which places no explicit time limit on the duration of the PEN detention, as meaning it can hold prisoners under the PEN powers indefinitely. The Supreme Court, overruling a number of lower court decisions, has upheld this view, accepting broad and unsubstantiated charges of association with subversion as sufficient grounds for detention. Some PEN prisoners have been in jail without charge for several years -- including

a significant number detained before 1976.

Since January 1, 1979, 44 persons, who have not since been located, have disappeared under circumstances suggesting that they were taken by security forces; most of these disappearances occurred in the first half of the year. There have also been charges that persons are being held clandestinely by the security forces. While there is no evidence that large numbers of persons are thus being held, hopes have been nourished by the experience of some prisoners who "disappeared", were presumed to be dead, and later -- in some cases months or years later -- reappeared as officially acknowledged prisoners held under the "PEN". Reports of the existence of clandestine camps have diminished in the last several months.

In September 1979 the Government approved a law shortening the period required for a court finding of presumptive death; it gives the Government as well as relatives the right to initiate proceedings. The law has alleviated some personal hardships in legal and financial matters; however, it has drawn sharp criticism from Argentine human rights organizations, relatives, and the European Parliament because they feared the Government would use the law to arbitrarily close the cases of the disappeared.

In 1979 the Government reduced the number of prisoners being held under the "PEN" from 3,400 to about 1,300, freeing some, bringing some to trial, expelling others and allowing still others to leave the country. Perhaps another 1,000 are serving sentences after trial and conviction on charges of terrorism, or "subversive" political activity or associations. About 500 more are still in trial status.

d. Denial of Fair Public Trial

The trial of those accused of subversion or terrorism may be held in civilian or military court. Civilian courts follow the customary legal provisions regarding open and fair trials. Argentine law, however, requires written rather than oral testimony, so that "open" has a different meaning and different consequences from those in other legal systems. The law provides that the civilian courts are independent, but the pressures accompanying trials involving subversion and terrorism make it difficult for the courts to maintain independence. Military tribunals, before which civilians may be tried, conduct their proceedings in secret. The defendants have access only to a military defense counsel who is usually not a lawyer. Defendants legally may be kept unaware of the evidence against them, in both military and civilian proceedings.

An adequate defense in cases of terrorism or subversion is also difficult to ensure because many attorneys are reluctant to assume cases of this nature for fear of harassment and reprisals. The New York City Bar Association, in its report on the visit of its mission of lawyers to Argentina, concludes that some lawyers disappeared or were detained as the result of defending clients and causes unpopular with the Government, resulting in the intimidation of other lawyers.

While the courts are constitutionally independent, in 1976 the Junta replaced all members of the Supreme

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Court; it also removed a number of judges in lower courts, though most judges were retained. The courts have often upheld Executive interpretations of laws and the Constitution. However, there have been instances, when the courts challenged Government actions and interpretations of its powers. The most celebrated of these cases revolved around detained newspaper publisher Jacobo Timerman -- who was ordered released by the Supreme Court in an opinion the Junta upheld despite the reported objection of some members of the military.

The Bar Association's report also highlights other problems associated with the lack of due process, but does state that "the ingredients for progress are present" in Argentina. In its report the Association cited the decline in abductions, the Government's commitment to expand procedural safeguards, and certain Supreme Court efforts to exert pressure in the direction of due process. The report recommends the removal of all detainees from executive detention, new trials for those convicted in military courts, an accounting for the disappeared, the termination of restrictions on the exercise of the right of option (see Section 3b) and the reestablishment of the rule of law and constitutional guarantees.

e. Invasion of the Home

The sanctity of the home has traditionally been protected by Argentine law, custom and practice. The security forces, however, have often violated such sanctity during their anti-terrorist and anti-subversive operations. Though the number of intrusions dropped off during 1979, information available suggests that violations of the home's sanctity in the form of raids and unauthorized searches remains a practice of these forces.

2. Government Policies Toward the Fulfillment of Such Vital Needs as Food, Shelter, Health Care and Education:

Argentina is one of the most advanced of the newly industrialized nations. Indices of Argentina's standard of living are high. In 1978 per capita income in current dollars was \$2,331 and Argentine governments have -- within the economic constraints of recent years -- sought to confront social needs.

Unemployment in Argentina was only 1.8 percent in 1978; the distribution of income has become less equal in recent years, in part as a result of government policies designed to reduce inflation and revitalize the country's productive sector. Toward that end, the Government has made an effort to open the economy to external competition by lowering tariff protection, reducing subsidies, and limiting state involvement in the economy. Inflation, however, is still high, running at about 160 percent for the year.

The tax system is progressive and tax collections are increasingly effective, though compliance remains a problem.

Education has been free and is widely available, although the Government is now moving to require tuition for university-level education. Illiteracy is virtually non-existent. Health care programs account for a major share of the Government's budget. Government,

private, and trade union medical care programs make treatment available and affordable to most of the population.

There is a serious housing deficit in Argentina, much of it attributable to now defunct legislation that sustained rent control guidelines. Corruption in the public sector has declined significantly under the current government.

3. Respect for Civil and Political Liberties, Including:

a. Freedom of Speech, Religion, and Assembly

The Argentine Constitution provides for these freedoms, but under both civilian and military governments they have been circumscribed since the imposition of the "state of siege" in November 1974. The climate of violence and repression in Argentina in recent years has made many Argentines fearful of exercising freedom of speech.

Since 1976 the Government has intervened or confiscated a number of newspapers, notably La Opinion, edited by Jacobo Timerman. Journalists have been among the Argentines who "disappeared". Although the press is not subject to prior official censorship, Government-imposed guidelines result in self-censorship. Newspapers have, however, actively criticized the Government on economic policy and have discussed political issues including, especially in recent months, human rights. Most foreign publications enter Argentina without censorship although occasionally some issues are censored for political and sexual content.

The Argentine Constitution requires that the President be a member of the Catholic Church, and the majority of Argentines profess this faith. Other religions are required to register with the Government; all but one are permitted to function, and there are substantial minority religious groups, including a 450,000 member Jewish community. There are credible reports of anti-Semitic attitudes and behaviour in the security forces, but the Government publicly condemns religious prejudice and maintains officially correct relations with the organized Jewish community. The Government has refused to permit the legal registration of the Jehovah's Witnesses who number approximately 30,000 in Argentina. Their properties and meeting places have been closed, and Witness children have been expelled from provincial school systems for refusing to salute the flag and sing the national anthem. Although the Supreme Court has now ruled in one case that primary school children should be allowed to return to school, the Witnesses still report instances at the local level where children are expelled from school for failure to respect national symbols.

Several human rights organizations, uniting activists and relatives of the disappeared, have played a significant role in Argentina over the past several years. Some leaders of these groups were harassed and threatened during 1979, and a police raid on the headquarters of three of the organizations in August raised questions about the future. The police action was ordered by a federal judge. The files of the organizations seized during the raids had not been returned to them by

December, when this report was prepared. The "Mothers of the Plaza de Mayo" -- relatives of disappeared persons -- who used to assemble in front of the Ministry of the Interior in the Plaza de Mayo, were forcibly prevented from using the Plaza late in 1978 and early 1979 and were not permitted to return in 1979. Some of the "Mothers" themselves disappeared, including at least one during 1979.

b. Freedom of Movement Within the Country, Foreign Travel and Emigration

Argentines are free to travel without restriction within the country and to leave without restriction. They are free to emigrate. The Argentine Constitution permits persons held under executive detention (PEN) to choose self-exile. Exercise of this "right of option" was denied by the current government until 1978 and is still restricted through the use of an extensive screening process for all applicants. Many applications were denied during 1979, even though the applicants held documents authorizing them to enter other countries.

c. Freedom to Participate in the Political Process

After the March 1976 coup d'etat, the Government restricted or suspended most elements of the democratic political process. It has expressed its intention of moving the country back toward normal constitutional, democratic processes but has not established a timetable for reaching this goal. In December 1979, the Government promulgated a "political plan" containing broad guidelines and a commitment for an eventual return to civilian government. The plan promises implementing legislation in the second half of 1980 following a dialogue between military leaders and diverse civilian groups.

The right of assembly for political groups has been suspended since March of 1976, but the Government has tolerated a low level of organized political activity by established political parties. Party leaders meet, spokesmen criticize a variety of government policies and actions, and proclamations are issued in the names of specific parties. Some informal meetings of party leaders have, however, been disrupted by the police, and the leaders detained for brief periods.

Argentine women enjoy equal juridical status with men. Women's rights are not a contentious issue in Argentina, as jobs and educational opportunities, along with support systems that facilitate the simultaneous handling of job and family, are readily available. Sex discrimination is prohibited in education, politics and employment. Tradition and social customs still dictate that a woman's primary responsibility is to husband and home and limits women's participation in the work force.

The government has intervened major trade unions, replacing high level union officials with military personnel, and strikes have been prohibited. In 1976, and again in mid-1979, the Government detained a number of important labor leaders (almost all have since been released). Strikes for wage increases have nevertheless occurred and nearly all have been settled without violence. On November 15, after more than three years of study, the government issued a new Trade Union

law which sets the guidelines for Trade Union organization and lays the groundwork for lifting the suspension of union activities which has been in effect since the Armed Forces took power in 1976. It is not clear when the Government will lift the suspension of the right to strike and to bargain collectively. From the Government's point of view, the new law is designed to introduce more grass roots democracy and freedom of association for the workers than existed in the past; labor leaders, on the other hand, see it as an emasculation of union power, as it proscribes all political activity and greatly restricts control over social funds. The procedural steps for the implementation of the new law will not be clarified until the Ministry of Labor issues detailed regulations, which may take up to another 120 days to be drafted. The ICFTU has condemned the law as a violation of union rights.

In September 1979, two major groups of union leaders merged to form the United Leadership of Argentine Workers (CUTA), a provisional committee which purports to speak in the name of the organized Argentine trade union movement in the absence of an officially functioning national central body. Although enjoying no official standing or recognition by the Government, CUTA is active in making its views known. For example, CUTA opposes the recent trade union law on grounds that it restricts freedom of association and the right to organize as defined in conventions 87 and 98 of the International Labor Organization as ratified by the Argentine Government. It also opposes the new law's prohibition against political action by trade unions.

4. Government Attitude and Record Regarding International and Non-governmental Investigation of Alleged Violations of Human Rights:

In late 1978, the Argentine Government invited the Inter-American Human Rights Commission to visit Argentina. That visit took place from September 6 to 20, 1979. The Commission met with President Videla and other high-level government, human rights, religious, political, and labor officials, took testimony from family members of disappeared persons and from former prisoners, and visited several prisons and detention centers. The Commission will submit its formal report to the OAS in 1980. Argentina has not signed the American Convention on Human Rights.

The International Committee of the Red Cross (ICRC) maintains an active program in Argentina, with government approval, on behalf of imprisoned persons. The ICRC also monitors prison conditions. The Government has usually received and facilitated the efforts of various groups and individuals seeking to investigate allegations of human rights abuse. Foreign observers have generally corroborated allegations that abuses have taken place.

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